

• IS IT POSSIBLE TO PROTECT AGAINST THE COSTS OF FUTURE RESIDENTIAL CARE HOME FEES?

When contemplating old age many of us are concerned about the cost of care home fees and of being forced to sell our homes to meet the costs. Giving your property to your children now may seem like an attractive option, but is it?

When assessing whether or not you are eligible for assistance with long-term care fees the Social Security Department will carry out an assessment of your income and capital assets to establish whether or not you fall under the capital threshold, currently £13,706 for an individual or £22,718 for a couple.

In carrying out that assessment, Social Security will consider if you have directly or indirectly deprived yourself of any income or capital in order to qualify for income support. If the department finds that you have, then the amount of that income or capital will be included in your total income, or capital as the case may be.

What this means is that should you transfer your property into your child or children's names then it is likely that the department would view this as a transaction entered into purely to avoid paying fees and you would be assessed as still owning the asset; particularly in circumstances where you were to continue living in the property. This is also the case if the transaction is entered into at less than market value.

In addition, there is an increased risk to you because once the property is transferred out of your name and into your child or children's names, it becomes their asset. If there was a family fall out your children could decide to sell your home from under you.

In addition, if one of your children died before you, the property would pass in accordance with their will or on an intestacy to their direct heirs (which would not be you if they have children or surviving siblings). Your ability to live in the property would then be in the hands of the beneficiaries of their estate.

If a child went 'en desastre' (bankrupt) then the house may have to be sold to pay their creditors. If a child was divorced then the property could be taken into account in any settlement.

ARE THERE ANY OTHER FINANCIAL ARRANGEMENTS THAT COULD BE PUT IN PLACE?

It may be possible to place the property into a trust. However, the costs of establishing a trust and the annual management charges would be a factor to consider given the value of the assets in question; and as the law stands at present, Jersey real property cannot be held by a trust and therefore a company would have to be incorporated.

The property would have to be transferred into the ownership of the company (thus incurring stamp duty) and the shares of the company would then be held by the trustees. This would incur additional professional costs and annual charges payable to the Company Registry. In addition, it remains the case that any large transfer of assets is likely to be examined by the Social Security Department.

Every case is reviewed by the department on an individual basis and while there is no timeframe set out in the law before which transfers of assets are exempt, the more time that has elapsed since the transaction the less likely it is to fall within the 'cost avoidance' category.

Comfort should be taken from the fact that it is not Social Security's policy to force a claimant to sell their own home to meet the cost of residential fees, if they do not have sufficient income to meet the costs of the fees. However, any contribution made by the department to those fees will be treated as a long-term (interest free) loan and a charge will be taken over the claimant's property which will be called in when the property is subsequently sold, usually on the death of the claimant.

POSSIBLE CHANGES ON THE HORIZON

This is an area of law which is currently under review. The Social Security Department has revealed that it has plans to introduce a 'universal' benefit, to which everyone will contribute during their lifetime and which will then be placed in a pot to meet the long-term care needs of the Island's population.

The department has indicated that in future a property up to the value of £750,000 could be disregarded when an individual's finances are assessed. The department hopes that the universal benefit could be introduced as early as 2013, but substantial legislative changes will have to be put in place first. Accordingly, before considering whether to enter into some form of transaction with your children you should seek legal advice.

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FOR MORE INFORMATION, PLEASE CONTACT:



CLARE NICOLLE
ASSOCIATE
t: +44 (0)1534 601747
e: clare.nicolle@collascrill.com

Collas Crill Jersey

40 Don Street,
St Helier,
Jersey, JE1 4XD
t: +44 (0) 1534 601700
f: +44 (0) 1534 601701
e: jersey@collascrill.com
w: www.collascrill.com